



Crl.A.No.236 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.A.No.236 of 2021
and
Crl.M.P.No.13018 of 2021

1.Sri Sabari Andavar Emu Farms,
Site No.35 to 37,
Thangam Nagar, Nachipalayam,
Kangayem Main Road,
Tirupur.
(Represented by A2)

2.T.Eswaramoorthy

... Appellants/A1 & A2

Vs.

State, represented by
The Inspector of Police,
Economic Offences Wing II Unit,
Coimbatore.

... Respondent

Prayer : Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure, seeking to allow the appeal by setting aside the conviction and sentence imposed against the appellant/accused passed by the learned Special Judge, Special Court under TNPID Act, Coimbatore in C.C.No.18 of 2014 dated 15.04.2021.



Crl.A.No.236 of 2021

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For Appellants : Mr.G.Murugendran
For Respondent : Mr.G.V.Kasthuri
Additional Public Prosecutor

JUDGMENT

Assailing the judgment dated 15.04.2021 passed in C.C.No.18 of 2014 on the file of the learned Special Judge, Special Court under TNPIC Act, Coimbatore, the accused has filed the present appeal.

2. The case of the prosecution is that A1 company Sri Sabari Andavar Emu Farms run by A2/T.Easwaramoorthy at Site No.35 to 37, Thangam Nagar, Nachipalayam, Kangayam Main Road, Tirupur, a financial establishment, registered on 05.02.2012 vide TIN No.33702394200 before Commercial Tax Office, Tirupur and A2 is responsible for the day-to-day work and management of the affairs of the financial establishment. During the period of 24.02.2012 to 03.08.2012, he has given frequent advertisements about his Scheme-I and Scheme-II through daily news papers, television, channels, pamphlets etc.,



Crl.A.No.236 of 2021

WEB COPY

canvassed and explained his two schemes to the depositors and collected deposits by giving false promises that he will give huge return on the deposits. In Scheme-I, the company would collect Rs.1,50,000/- as 1 unit and i) the company will supply 6 emu birds, ii) will erect the sheds for the emu birds, iii) will provide feeds, iv) will provide free insurance to the emu birds v)will provide free medical checkups and free medicines to maintain the emu birds, vi) will pay Rs.8,000/- per month as maintenance for rearing of Emu birds along with a yearly bonus of Rs.20,000/-; on the maturity date i.e., after 24 months, the company would take back the grown up Emu birds, after refunding the initial deposit. In Scheme-II, the company would rear the Emu birds on behalf of the depositors, pay monthly return of Rs.12,000/- and also yearly bonus Rs.20,000/- to the depositors; at the end of the maturity period i.e., after 24 months, entire initial deposit amount would be refunded to the depositors by the company, however, after the maturity period, A2 had no intention to return the money and he indulged in fraudulent financial operation and used the money of the depositors for paying salaries to the employees, commissions, conveyance charges, telephone bills, etc., and utilised major portion of the collected deposit amounts for his personal benefit.



Crl.A.No.236 of 2021

WEB COPY

Further, in the course of same transactions, A2 collected deposit amounts in the name of A1 from the public to the tune of Rs.15,58,800/- from 11 depositors by executing the agreement on behalf of A1 company with ulterior motive to cheat them and defaulted in the payment of interest as well as principal deposit amount and had not rendered any service as promised by them. Therefore, a case in Crime No.29 of 2012 has been registered for the offence u/s 406, 420 of IPC and Section 5 of TNPID Act, 1997 and the law enforcing agency filed the final report, which was taken on file in C.C.No.18 of 2014. After trial, the trial court vide judgment dated 15.04.2021 convicted the accused u/s 406 and 420 of IPC and Section 5 of TNPIC Act, 1997. Aggrieved by the same, the present appeal has been filed.

3. Learned counsel appearing for the appellants submitted that in all, there are 11 depositors, to whom around Rs.15 lakhs is payable by the accused. Out of the 11 depositors, claim of one depositor has been settled before the trial court and the remaining 10 depositors have also been settled by the accused. Accordingly, he prays for appropriate orders.



Crl.A.No.236 of 2021

WEB COPY

4. Learned Additional Public Prosecutor appearing for the respondent submitted that, as per the directions issued by this court, the law enforcing agency has verified whether the accused had settled the depositors. Further, she submitted that in the enquiry, it is found that before convicting the accused, one of the depositor was settled and subsequently, during the pendency of this appeal, remaining 10 depositors were also settled. She has also produced the statements recorded from the 10 depositors, who were settled after the judgment, before this court today.

5. It is seen from the statements that they were settled by the accused and they do not want to proceed any further against the accused. They have consented for compounding the offence committed by the accused.

6. In the case of **Damodar S. Prabhu Vs. Syed Babalal H., reported in [2010 (5) SCC 663]**, the Full Bench of the Hon'ble Supreme



Crl.A.No.236 of 2021

Court has held that where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognise some of them as compoundable offences and some others are compoundable only with the permission of the Court. In this regard, it is useful to extract hereunder paragraphs 16 and 17:

"16. It is evident that the permissibility of the compounding of an offence is linked to the perceived seriousness of the offence and the nature of the remedy provided. On this point we can refer to the following extracts from an academic commentary [cited from : K.N.C. Pillai, R.V.Kelkar's Criminal Procedure, Fifth Edn. (Lucknow: Eastern Book Company, 2008) at p.444]

"17.2. Compounding of offences .-- A crime is essentially a wrong against the society and the State. Therefore any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognise some of them as compoundable offences and some others as



Crl.A.No.236 of 2021

compoundable only with the permission of the Court."

17. In a recently published commentary, the following observations have been made with regard to the offence punishable under Section 138 of the Act [cited from : Arun Mohan, some thoughts towards law reforms on the topic of Section 138, Negotiable Instruments Act – Trackling an avalanche of cases (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2009) at p.5]:

"...Unlike that for other forms of crime, the punishment here (insofar as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeking the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque."



Crl.A.No.236 of 2021

WEB COPY

7. Applying the ratio laid down in the aforesaid case and also considering the fact that the present case is not of a serious nature, but involves only monetary transactions between the parties and the amounts, which are due and payable to the other party has also been settled by the accused towards which the respondent has also filed the statements of the persons, who have received the money and also taking into consideration the fact that the depositors have received their money and they do not want to prosecute the case against the appellants/accused and that they have no objection for compounding the offence, this Court is of the considered view that no useful purpose will be served in convicting and sentencing the accused, more so, when the accused have settled the dues and the depositors have also expressed their inclination to have the offence compounded.

8. In view of the above, the conviction and sentence imposed on the appellants/accused vide judgment dated 15.04.2021 passed in C.C.No.18 of 2014 by the learned Special Judge, Special Court under TNPID Act, Coimbatore is set aside and the criminal appeal is allowed



Crl.A.No.236 of 2021

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by compounding the offence. Further, the 2nd appellant/A2 is acquitted of all the charges levelled against him and the bail bond, if any, executed by the accused shall stands cancelled. The statements recorded from the 11 depositors shall form part of the records.

05.07.2024

Index : Yes / No

Speaking order / Non-speaking order

NCC : Yes / No

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To

The Special Judge, Special Court under TNPID Act, Coimbatore.



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Crl.A.No.236 of 2021

M.DHANDAPANI, J.

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Crl.A.No.236 of 2021

05.07.2024